

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:

JOSEPH JOHN KUBALA, III

and

ERIN COLLEEN KUBALA

Debtor

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Case No. 19-40292

Chapter 13

**ORDER MODIFYING CONFIRMED CHAPTER 13 PLAN
AND GRANTING ADDITIONAL AWARD OF ATTORNEY'S FEES**

On November 4, 2020, the Court considered the Motion to Modify Confirmed Chapter 13 Plan (the "Modification Motion") filed on July 1, 2020 by the Debtors, Joseph John Kubala, III and Erin Colleen Kubala (the "Debtors"). The Modification Motion seeks to modify the terms of the confirmed Chapter 13 plan [dkt #21] in the above-referenced case (the "Confirmed Chapter 13 Plan"). The Court finds that appropriate notice of the Modification Motion and the hearing were each properly given pursuant to the Federal and Local Rules of Bankruptcy Procedure. The Court finds that, as set forth on the record in open court, all objections to the Modification Motion have been withdrawn or overruled and that all applicable requirements set forth in § 1329 of the Bankruptcy Code have been fulfilled. Accordingly, the Court finds that just cause exists for the entry of the following order.

IT IS THEREFORE ORDERED that the Motion to Modify Confirmed Chapter 13 Plan filed on July 1, 2020 by the Debtors, Joseph John Kubala, III and Erin Colleen Kubala, is hereby **GRANTED**, the Confirmed Chapter 13 Plan is hereby **MODIFIED** in accordance with the provisions set forth in the Modification Motion, as amended by this Order, and the Chapter 13 Trustee shall adjust his distributions accordingly.

IT IS FURTHER ORDERED that, without the necessity of further disclosure to creditors, the Modification Motion is amended in the following manner:

§ 2.2 of the Plan regarding regular plan payments is MODIFIED in the following respects.

Beginning on the 30th day after the Petition Date³ unless the Court orders otherwise, the Debtor will make regular payments to the Trustee in variable amounts throughout the applicable commitment period and for such additional time as may be necessary to make the payments to claimants specified in Parts 3 through 5 of this Plan (the "Plan Term"). The payment schedule shall consist of:

 Constant Payments: The Debtor will pay \$ _____ per month for _____ months.

 X **Variable Payments:** The Debtor will pay make variable plan payments throughout the Plan Term. The proposed schedule for such variable payments are set forth in Exhibit A to this Order and are incorporated herein for all purposes.

"Trustee objected to feasibility, for among other reasons the plan contemplates a sale of a house or inability to make payments will likely result in a sale of the homestead. To resolve the feasibility objection, the Debtors agree if they seek to sell their homestead: (a) they will move to approve any sale or refinancing; (b) the title company shall be deemed to have received and distributed on the Trustee's behalf all amounts paid on claims that are to be paid through this plan, remain unpaid, and are paid at closing; (c) the Trustee shall receive a fee on all the amounts received and distributed on her behalf; and (d) the title company at closing will distribute to the Trustee her fee based on the then prevailing Trustee fee percentage."

IT IS FURTHER ORDERED that all provisions of the Confirmed Chapter 13 Plan not addressed by the Modification Motion or this Order remain in full force and effect.

IT IS FURTHER ORDERED that the request for an additional award of attorney's fees, as contained in ¶ 5 of the Modification Motion, is **GRANTED** and that The Mitchell Law Firm, L.P., is awarded the sum of \$650.00 which shall be in addition to any other fees previously awarded or paid in this case.

Signed on 11/6/2020

Brenda T. Rhoades MD
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

/s/ Carey D. Ebert
Carey D. Ebert, Chapter 13 Trustee

Date _____

/s/ Gregory W. Mitchell
Gregory W. Mitchell, Attorney for Debtor

Date 10/30/2020

Case Number: 19-40292

Payment Start Date: March 5, 2019

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